IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

MFA.No. 309 of 1995(C)

OPMV.309/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, NEYYATTINKARA
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APPELLANT/(5th RESPONDENT IN M.V.O.P):

THE ORIENTAL INSURANCE CO. LTD., BRANCH OFFICE, NEYYATTINKARA, REP. BY THE DEPUTY MANAGER, MOTOR THIRD PARTY CLAIMS OFFICE, IV-VETTUKATTIL BUILDINGS, JOSE JUNCTION, KOCHI-682 016.

BY ADV. SRI.M.JACOB MURICKAN

RESPONDENTS/(PETITONERS AND RESPONDENTS 1 TO 4 IN M.V.O.P):

1.ARIFA BEEVI, D/O.LAILA BEEVI,AYANIMOODU VILAKOM PUTHEN VEEDU, VAZHIMUKKU, BALARAMAPURAM P.O., ATHIYANOOR VILLAGE.

2.AMEENA (MINOR) AGED 5 YEARS, D/O.ARIFA BEEVI, AYANIMOODU VILAKOM-PUTHEN VEEDU, VAZHIKUKKU, BALARAMAPURAM P.O., ATHIYANOOR VILLAGE. REP. BY 1ST RESPONDENT (MOTHER) AS NEXT FRIEND AND GUARDIAN.

3.ALEEMA, (MINOR) AGED 3 YEARS, D/O.ARIFA BEEVI, AYANIMOODU VILAMOM PUTHEN VEEDU, VAZHIMUKKU, BALARAMAPURAM P.O., ATHIYANOOR VILLAGE, REP. BY THE 1ST RESPONDENT (MOTHER) AS NEXT FRIEND AND GUARDIAN.

4.UMMERKHAN, (MINOR) AGED 11/2 YEARS, S/O.ABDUL JABBAR, AYANIMOODU VILAKOM PUTHEN VEEDU, VAZHIMUKKU, BALARAMAPURAM P.O., ATHIYOOR VILLAGE, REP. BY THE 1ST RESPONDENT (MOTHER) AS NEXT FRIEND AND GUARDIAN.

5.BEEVI UMMAL, D/O.KATHIR PILLAI BEEVI,AYANIMOODU VILAKOM PUTHEN VEEDU, VAZHIMUKKU, BALARAMAPURAM P.O., ATHIYOOR VILLAGE.

6.KRISHNA PANICKAR, VADAKKUMKARA VEEDU, KAIPPALLYKONAM, PONGUMMOODU, MARANALLOOR, NEYYATTINKARA.

7.SANTHOSH KUMAR,S/O.KRISHNA PANIKER, KAIPALLYKONAM, PONGUMOODU, MARANALLOOR, NEYYATTINKARA.

8.THE DIVISIONAL MANAGER, NEW INDIA ASSURANCE CO. LTD., THIRUVANANTHAPURAM.

9.K.ASHOK KUMAR, KAIPALLYKONATHU, VADAKKUMKARA VEEDU, CHEENIVILA, KOOVALASSERY P.O., NEYYATTINKARA.

BY ADV. SRI.S.GOPAKUMARAN NAIR FOR R6
SRI.THOMAS MATHEW NELLIMOOTTIL FOR R8
SRI.K.R.KURUP
SRI.VARKALA S.M.NAIR
SRI.C.R.SYAMKUMAR FOR R1 TO R5
SRI.R.GOPAKUMAR
SRI.GOPAKUMAR R.THALIYAL
SRI.EBY GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.309 OF 1995 (C)

Dated this the 25th day of May, 2007

J U D G M E N T

KOSHY,J.

Appellant Insurance company who was the 5th respondent in O.P.(MV).No.1049/1993 of the file of the Motor Accidents Claims Tribunal, Neyattinkara filed this appeal contending that their liability was limited. Accident occurred on 23.9.1989. The appellant was the insurer of tourist taxi bearing registration No.KEV 5272. Because of the rash and negligent driving of the above vehicle, one Abdul Jabbar who was standing on the foot path died. His wife, three minor children and mother filed claim petition. Tribunal awarded an amount of Rs.1,31,400/-. Before the tribunal originally it was pleaded that New India Insurance company has insured the above offending vehicle and the above company was the 3rd respondent in the claim petition before the tribunal (8th respondent in this appeal). They filed a written statement stating that they were not the

insurer of the vehicle involved in the accident during the relevant time and the appellant Insurance company has insured the vehicle during the period when accident was occurred. It is also stated by them that at the time of accident 9th respondent in the appeal (Addl.4th respondent in the claim petition) was the owner of the vehicle. New India Insurance company also produced the copy of insurance policy which was in force during the relevant time which was marked as Ext.B2. A copy of the above policy was also produced by the appellant Insurance company before this Court. It shows that during the relevant time appellant Insurance company insured the vehicle in question and 9th respondent in this appeal was the owner of the vehicle. Notice on the appeal was sent as early as in 1995. There is no contention that 7th respondent (2nd respondent in the claim petition before the tribunal) was not the driver of the vehicle at the time of the accident or 9th respondent was the owner of the vehicle at the relevant time. They did not file any appeal also against the award of the tribunal. In any event, Ext.B2 policy which was marked shows that 9th respondent was the owner of the vehicle. Accident occurred prior to the

introduction of 1989 Act. Before the Act came into force policy itself expired on 23.6.1989. According to the Insurance company its liability to third parties was limited to Rs.50,000/-. This part was not seriously contended before the tribunal as appellant Insurance company was impleaded after evidence of the claimants were over. Counsel for the 9th respondent submitted that he was also impleaded subsequently and he has to verify the documents to contend that there was unlimited liability even as per the policy as additional premium was paid. In the above circumstances, matter is remanded to find out whether there is limited liability only. Appellant Insurance company has already deposited Rs.50,000/- with interest. Accident occurred in 1989. So far dependents of the deceased did not get the full amount of meager compensation granted. In the above circumstances, appellant Insurance company who was admittedly insurer of the vehicle is directed to deposit the entire balance amount awarded by the tribunal. If there is limited liability only, appellant Insurance company is entitled to recover the amount from 7th and 9th respondents, driver and owner of the vehicle (2nd and 5th respondents in the claim

petition) in execution of the same award. Parties may appear before the Tribunal on 31.7.2007. Appeal is allowed by way of remand only for deciding the limited question as already directed. Lower court records as well as certified copy of the policy produced before this Court by appellant along with I.A.No.961/2007 should be forwarded to the tribunal urgently.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.309 OF 1995 (C)

J U D G M E N T

25th May, 2007